

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

A.C.T. INSTITUTE OF TECHNICAL AND FURTHER EDUCATION

(AMENDMENT) ORDINANCE NO. 82 OF 1988

The A.C.T. Institute of Technical and Further Education Ordinance 1987 (the Principal Ordinance) established an Institute of Technical and Further Education in the Australian Capital Territory.

The A.C.T. Institute of Technical and Further Education (Amendment) Ordinance 1988 (the Ordinance) amends the Principal Ordinance in order to establish an A.C.T. Institute of Technical and Further Education Advisory Committee to advise the Director of the Institute about matters relating to the functions of the Institute. The establishment of the Committee ensures community participation in the management of the Institute. The Director is required to have regard to any advice given by the Committee in managing the Institute.

The Ordinance gives effect to certain undertakings given to the Senate Standing Committee on Regulations and Ordinances arising out of its consideration of the Principal Ordinance.

These undertakings were:

- . to require various powers conferred by the Principal Ordinance to be exercised in writing;
- . to provide for the Institute to disclose in its annual report details of instances where the Minister has not tabled in the Parliament details of the commercial transactions of the Institute because of his or her belief that its commercial interests would be adversely affected;
- . to make specific provision for the termination of the Director's appointment; and
- . to clarify the powers of the Director in relation to the imposition of penalties.

Details of each of the provisions of the Ordinance are set out in the Attachment.

**ISSUED BY AUTHORITY OF
THE MINISTER OF STATE
FOR THE ARTS AND TERRITORIES**

A.C.T. Institute of Technical and Further Education (Amendment)
Ordinance 1988

Section 1 cites the short title of the Ordinance as the A.C.T. Institute of Technical and Further Education (Amendment) Ordinance 1988.

Section 2 cites the A.C.T. Institute of Technical and Further Education Ordinance 1987 as the Principal Ordinance.

Section 3 amends subsection 3(1) of the Principal Ordinance in relation to interpretation by inserting definitions of Chairperson, Committee, Deputy Chairperson and member.

Sections 4, 5 and 6 give effect to undertakings given to the Senate Standing Committee on Regulations and Ordinances to ensure that important decisions are reduced to writing.

Section 4 amends subsection 5(2) of the Principal Ordinance in order to require that the approval by the Minister of a determination by the Director of the Institute (the Director) that the A.C.T. Institute of Technical and Further Education (the Institute) shall consist of added fields of technical and further education, shall be in writing.

Section 4 also adds a new subsection 5(3) in order to require that:

- (a) such a determination by the Director under subsection 5(2) is to be in writing; and
- (b) a requirement by the Minister under subsection 5(2) that further fields be added to the Institute is to be in writing.

Section 5 amends section 6 of the Principal Ordinance to require that the Minister's approval under paragraph 6(1)(a) of the Principal Ordinance of the fields of technical and further education, the achievement of excellence in the study of which the Institute is to foster, must be in writing.

Section 5 also inserts a new subsection 6(3A) to require that both:

- (a) a determination by the Director, or a requirement by the Minister, under paragraph 6(1)(a) of the Principal Ordinance, to add to the fields of technical and further education which the Institute fosters; and
- (b) a direction by the Minister, under subsection 6(3) of the Principal Ordinance, in relation to the performance of the Institute's functions,

shall be in writing.

Section 6 omits subsection 7(2) of the Principal Ordinance and substitutes a subsection 7(2) which provides that the approval by the Minister for a contract exceeding \$100,000 must be in writing and the contract also must be in writing.

Section 7, which gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances, inserts a section 10A obliging the Minister to review each year his or her opinion that the disclosure of the Institute's participation in the formation of a subsidiary company, formation of a partnership or participation in a joint venture would adversely affect the commercial interests of the Institute. The Audit Regulations will be amended to require the inclusion in the annual report of the Institute of details of the Minister's opinion under paragraphs 8(3)(b)(ii), 9(3)(b)(ii) or 10(3)(b)(ii). Proposed new section 10A ensures annual review of these opinions with a view to ensuring that the annual report continues to include details of these opinions until they are no longer held and disclosure can be made.

Section 8 amends the heading to Part III of the Principal Ordinance by omitting "Committees" and substituting "Committee". This is necessary because the Ordinance provides for the appointment of only "a Committee".

Section 9 amends subsections 11(1) and 11(4) of the Principal Ordinance by providing that the appointment of the Director by the Minister is to be in writing and any determination by the Minister of the terms and conditions of the Director's appointment is to be in writing. This gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances.

Section 10 inserts a subsection 12(1A) requiring the Director to have regard to any advice given by the A.C.T. Institute of Technical and Further Education Advisory Committee, established under section 18, in managing the Institute's affairs.

Section 11 adds subsections 13(3) and 13(4) which clarify the Director's powers as enumerated in subsection 13(1) of the Principal Ordinance.

Subsection 13(3) empowers the Director to preclude a student, who has contravened a direction given by the Director under paragraph 13(1)(a) of the Principal Ordinance (relating to the management, good government and discipline of the Institute) from using any of the Institute's facilities or attending a course or any part of a course of study or instruction. The period for which the student is to be so precluded is to be specified by the Director.

Subsection 13(4) prevents the Director from imposing sanctions for contravening directions given under subsection 13(1) of the Principal Ordinance other than as provided for in subsection 13(3).

Subsections 13(3) and 13(4) provide the Director with a means of enforcing directions in appropriate circumstances.

Section 12 amends section 15 of the Principal Ordinance to require that the terms and conditions under which the Minister grants leave of absence to the Director are to be in writing. This gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances.

Section 13, which also gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances, inserts section 16A specifying the Minister's powers to terminate the Director's appointment as follows.

Subsection 16A(1) empowers the Minister to terminate the Director's appointment for misbehaviour or physical or mental incapacity.

Subsection 16A(2) provides that the Minister shall terminate the Director's appointment if the Director:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) is absent from duty, except on leave granted in writing by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (c) is convicted in the Australian Capital Territory, a State or another Territory, of an offence punishable on conviction by imprisonment for 1 year or more.

Section 14 inserts subsection 17(4A) which specifies that a Ministerial appointment under subsection 17(1), a determination of the terms and conditions of employment or the termination of an appointment, under subsection 17(3), of an Acting Director is to be in writing, as is a direction under paragraph 17(4)(a) by the Minister to an Acting Director to cease to so act. This gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances.

Section 15 repeals section 18 of the Principal Ordinance, which allowed the Director to appoint a Committee to advise or assist him or her, substitutes section 18 and includes sections 18A-18G relating specifically to a new A.C.T. Institute of Technical and Further Education Advisory Committee as follows.

Substituted section 18 establishes the A.C.T. Institute of Technical and Further Education Advisory Committee (the Committee).

Subsection 18A(1) provides that the function of the Committee is to advise the Director in relation to the Institute's functions and particularly the:

- (a) educational policies to be implemented in the Institute;
- (b) welfare of students at, and the management of, the Institute;
- (c) development of relationships between the Institute and the community; and
- (d) planning and programming of educational services to be provided by, and financial policies for, the Institute.

Subsection 18A(2) provides that advice given by the Committee to the Director shall be in writing.

Subsection 18A(3) empowers the Committee to report in writing to the Minister on any matter relating to the Institute's functions.

Subsection 18A(4) confers on the Committee power to do all things necessary or convenient to perform its function as specified in subsection 18A(1).

Subsection 18B(1) provides that the Committee shall consist of the Chairperson, Deputy Chairperson and 5 other members.

Subsection 18B(2) provides that, of the 5 other members referred to in subsection 18B(1); 3 shall represent respectively a teaching staff organisation, the student body and industry and commerce.

Subsection 18B(3) prohibits the appointment of the Director as a member of the Committee.

Subsection 18B(4) prohibits the appointment of a member of the Institute's staff as Chairperson or Deputy Chairperson of the Committee.

Subsection 18B(5) provides that members of the Committee must be appointed in writing by the Minister.

Subsection 18B(6) stipulates that a member of the Committee holds office for the period, up to a maximum of 3 years, and on the terms and conditions specified in the instrument of appointment.

Section 18C permits a member to resign by writing delivered to the Minister.

Subsection 18D(1) empowers the Minister to terminate the appointment of a member of the Committee for misbehaviour or physical or by mental incapacity.

Subsection 18D(2) requires the Minister to terminate a member's appointment if:

- (a) the member becomes bankrupt; applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) the member is absent, without advising the Minister or the Chairperson of the reason for his or her absence, from 3 consecutive meetings of the Committee;
- (c) the member is convicted in the Australian Capital Territory, a State or another Territory, of an offence punishable on conviction by imprisonment for 1 year or more;
- (d) the Minister has reasonable grounds for believing that a member has ceased to be a representative of (a) an organisation which represents the teaching staff (b) the student body or (c) industry and commerce as the case requires for a particular member; or
- (e) the member fails, without reasonable excuse, to comply with proposed section 18G relating to the disclosure of a pecuniary interest.

Subsection 18E(1) enables the Minister to appoint a person to act as Chairperson, Deputy Chairperson or as another member and limits to 12 months the period for which a person may act in consequence of a vacancy.

Subsection 18E(2) specifies that a person can only be appointed to fill a vacancy left by a representative of a group if that person is in fact a representative of that group.

Subsection 18E(3) prohibits the Director from acting as a member of the Committee.

Subsection 18E(4) prohibits a member of the Institute's staff from appointment as Acting Chairperson or Acting Deputy Chairperson.

Subsection 18E(5) provides that anything done by or in relation to a person purporting to act under section 18E will not be invalid because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Subsection 18F(1) requires the Committee to hold not less than 6 meetings per calendar year, but so that not more than 3 months elapse between each meeting.

Subsection 18F(2) empowers the Chairperson to convene a meeting at any time. He or she must do so if requested in writing by the Minister or at least 3 members.

Subsection 18F(3) provides that at a meeting of the Committee a quorum is constituted by 5 members.

Subsection 18F(4) requires the Chairperson to preside at all meetings of the Committee at which he or she is present.

Subsection 18F(5) provides that, if the Chairperson is absent from a meeting, the Deputy Chairperson shall preside.

Subsection 18F(6) provides that if the Chairperson and the Deputy Chairperson of the Committee are absent from a meeting the members present shall elect one of their number to preside at the meeting.

Subsection 18F(7) requires the Committee to keep a record of its proceedings.

Subsection 18F(8) provides that questions arising at a meeting of the Committee must be determined by a majority of votes of the members present and voting.

Subsection 18F(9) provides that the member presiding at a meeting of the Committee has a deliberative vote and, if the votes are equal, also a casting vote.

Subsection 18G(1) requires a member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Committee, as soon as possible after the relevant facts have come to the member's knowledge, to disclose the nature of the interest at a meeting of the Committee.

Subsection 18G(2) requires that a disclosure made under subsection 18G(1) shall be recorded in the minutes of the meeting. Unless the Committee otherwise determines, the member making the disclosure shall not:

- (a) be present during any deliberation of the Committee with respect to that matter; or
- (b) take part in any decision of the Committee with respect to that matter.

Subsection 18G(3) prohibits a member who has made a disclosure from being present or participating in the making of the decision whether to allow him or her to take part in the Committee's deliberations on that matter.

Section 16 amends section 20 of the Principal Ordinance by providing that a direction by the Minister for Finance for the payment of moneys appropriated by Parliament for the purposes of the Institute must be in writing. This gives effect to an undertaking to the Senate Standing Committee on Regulations and Ordinances as do proposed sections 17 and 18.

Section 17 amends section 22 of the Principal Ordinance by providing that a direction by the Minister:

- (a) specifying the form of estimates of receipts and expenditure; and
- (b) the times by which such estimates must be lodged with the Minister;

must be in writing.

Section 18 amends subsection 24(2) of the Principal Ordinance by requiring that:

- (a) a Ministerial approval of the estimates of expenditure be in writing; and
- (b) the Treasurer's approval of a bank, with which the Institute may invest its funds under paragraph 24(3)(a), or of the manner of investment of its funds under paragraph 24(3)(e), must be in writing.

Section 19 inserts a new paragraph 33(1)(c) relating to the obligatory notification to an affected party of the existence of a right of appeal to the Administrative Appeals Tribunal in relation to a decision of the Director precluding a student from using facilities or attending a course, or part of a course, under subsection 13(3) of the Principal Ordinance.

Section 20 amends section 34 of the Principal Ordinance in order to include a decision by the Director precluding a student from using facilities or attending a course, or part of a course, under subsection 13(3) of the Principal Ordinance as a decision in relation to which an application may be made to the Administrative Appeals Tribunal for a review.

Section 21:

- (a) amends subsection 35(1) of the Principal Ordinance by substituting "Minister" for "Governor-General" in order to correct an error in the Principal Ordinance; and
- (b) omits paragraph 35(2)(c) of the Principal Ordinance relating to the imposition of penalties upon staff or students for contravention of the Ordinance or of any administrative arrangements made or directions given by the Director under section 13 of the Principal Ordinance. Any penalty for the contravention of a direction by the Director is not be a monetary penalty and therefore the making of regulations for this purpose is not necessary.